Supreme Court, U.S.
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No. 05-1357

In The
Supreme Court of the United States

J. CHRIS SEAMAN,

Petitioner,

v.

JOHN GARAMENDI,
AS INSURANCE COMMISSIONER, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of The State Of California, Second Appellate District, Division Two

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether due process is violated when the government illegally seizes a business and bars its chief executive officer from continued involvement without any notice, without a hearing before or after the seizure, and with judicial review of constitutional claims only on the issue of whether the government agency abused its discretion in denying relief.

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A copy of the unpublished decision of the Court of Appeal of the State of California is included as the Appendix to this Petition for Certiorari at page 1 (hereafter "App."). The unpublished decision of the Superior Court of the State of California is included at App. 22. A copy of the order of the Supreme Court of California denying review of the California Court of Appeal's decision is included at App. 55.

STATEMENT OF JURISDICTION

Pursuant to 28 U.S.C. § 1257, this Court has jurisdiction to review the October 26, 2005 decision of the Court of Appeal of the State of California, following a denial of discretionary review by the Supreme Court of California on January 25, 2006.

CONSTITUTIONAL PROVISION INVOLVED

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, Amendment XIV.

STATEMENT OF THE CASE

On March 3, 2000, the Insurance Commissioner of California, entered premises leased by Superior National

Insurance Group, Inc. ("Superior National"), and seized the assets and operations of the entire group, insurance and non-insurance companies alike. Petitioner J. Chris Seaman was the chief executive officer of both Superior National, a holding company, and its subsidiaries. Without a warrant, agents of the Insurance Commissioner and at least one armed officer seized Seaman in his private office on Superior National's premises and escorted him (and other senior executives) off Superior National's premises. They forced Seaman to open his briefcase for inspection and leave his laptop computer, took his office keys and security card, and prevented him from entering Superior National's offices. This precluded Seaman from associating with colleagues and employees, including those who worked in businesses over which the Commissioner had no jurisdiction. The Insurance Commissioner took full control over Superior National and its subsidiaries and ultimately disposed of their assets.

On May 20, 2001, Seaman filed with the Insurance Commissioner three proofs of claim seeking compensation for his loss. One of the claims was for violation of his constitutional rights, including "the illegal search and seizure . . . of property and person of J. Chris Seaman without a warrant or probable cause, and . . . deprivation of property without due process of law."

The Commissioner did not respond to Seaman's claims for nearly two years, until Seaman demanded and the Superior Court ordered a response. Without conducting an administrative hearing on the claim, the Commissioner finally responded on April 23, 2003, denying the claims and all relief.

In July, 2003, Seaman applied under California Insurance Code §1032 for orders to show cause why his claims should not be granted. The trial court remarked at the hearing that "[n]obody seems to have a clear and simple answer of what the procedure is, and exactly how it should be approached," Tr. B-95:11-14, but nonetheless upheld the Commissioner's actions. (App. at 22). The California Court of Appeal affirmed the trial court. (App. at 1). The California Supreme Court denied review. (App. at 55).

STATEMENT OF FACTS

Petitioner J. Chris Seaman was chief executive officer of both Superior National Insurance Group, Inc. ("Superior National"), a holding company, and its subsidiaries. The Superior National subsidiaries that provided actual insurance coverage relied on other Superior National group companies for marketing, underwriting, claims handling, accounting, data processing, and other necessary services. This form of organization, common in the industry and subsequently approved by the Commissioner, is particularly appropriate when non-insurance companies in the group have service-related business with insurers other than their own insurance companies as Superior National did. (Appendix to Petition for Review in the California Supreme Court (hereafter "Appendix"), 155:1-5, 164:17-23, 877:15-20).

Seaman, an established insurance executive, had a contract with Superior National and its non-insurance company subsidiaries that conferred on him expectations of monetary reward and economic advantage.

In 1998, Superior National purchased Business Insurance Group, Inc., and its four subsidiary workers compensation insurance companies. The following year, Superior National reorganized its subsidiaries to consolidate operations, but it also discovered that the newly-purchased Business Insurance Group companies' finances were much weaker than the seller had represented. After unraveling their finances, Seaman notified the Commissioner on February 28, 2000, that the newly-purchased companies were financially impaired, and met with Insurance Department officials about effecting an orderly conservation of the insurance companies. Seaman was concerned that the Superior National group's significant non-regulated operations might be harmed by a conservator's acts or court orders directed at the impaired insurance subsidiaries, and that overreaching by the Insurance Commissioner might injure not only the insurance companies and the non-conserved Superior National companies, but also consumers and policy holders.

Despite Seaman's efforts toward an orderly conservation, on March 3, 2000, the Commissioner's agents and at least one armed law enforcement agent seized the assets and operations of the entire group, insurance companies and non-insurance companies alike. The Insurance Commissioner's agents had neither a warrant nor any court order authorizing their seizure of Seaman or the Superior National insurance or non-insurance companies. Seaman's brief case was searched, his laptop computer was seized, as were his keys and security card. He was barred from the company's offices.

Three days later, the Los Angeles and Sacramento superior courts issued orders appointing the Commissioner conservator of the four seized subsidiaries: Superior

National Insurance Company, Superior Pacific Casualty Company, California Compensation Insurance Company, and Combined Benefits Insurance Company. On June 9, 2000, the Commissioner conserved Commercial Compensation Casualty Company. (Appendix at 503).

No order gave the Commissioner authority over Seaman's person or property. No order gave the Commissioner authority over assets the five conserved insurance companies ("the Insurance Companies") did not own, or power to seize, conserve, liquidate or interfere with Superior National, SN Insurance Services, Inc., Business Insurance Group, Inc., or SN Insurance Administrators, Inc.

Nonetheless, the Commissioner seized Seaman in his private office and his private property. The Commissioner seized property belonging to companies that were never in conservation: Superior National leased the seized premises and owned most of the records and other property there. The Commissioner directed employees at the Superior National offices to work for the conserved Insurance Companies, even though they were employed by the non-conserved companies. (Appendix 159 ¶31(g)). The Commissioner seized 19 Superior National offices that were not subject to any court order and not leased or owned by any Insurance Company. Sixteen of them were not in California. (Appendix 826:19-22 and 856). The Commissioner illegally appropriated Superior National tax returns and distributed them to third parties. (Appendix 160 ¶31(j)). All these acts prevented Seaman from performing his contract with Superior National.

The Insurance Commissioner took more than $20,000,000 in assets, including cash, belonging to non-conserved

companies. (Appendix 158 ¶31(b)). These actions forced four Superior National companies that were not in conservation – Superior National Insurance Group, Inc., SN Insurance Services, Inc., Business Insurance Group, and SN Insurance Administrators, Inc. – to file Chapter 11 bankruptcy petitions.

Just as the Insurance Commissioner seized assets of non-conserved companies that were not subject to any court order, he interfered with the non-conserved companies' business and Seaman's livelihood. The Insurance Commissioner took control over the non-conserved companies' employees and repeatedly threatened Seaman with criminal prosecution if he attempted to contact his employees or otherwise performed his duties as CEO. For example:

•SN Insurance Services, Inc., a non-conserved company, had contracts to perform underwriting, administration, and general agency services to unrelated insurers, Centre Insurance, ZC Insurance, and Underwriters Insurance (Appendix 266, 288, 341), a form of business known as "managing general agency." (Appendix 161 §31(p)). Another related entity not in conservation, SN Insurance Administrators, provided claims services to the same unrelated insurers. The Commissioner never attempted to conserve these businesses, which were independent of the conserved Insurance Companies. Instead, the Commissioner simply ordered employees to stop providing services under the agreements, thus destroying the managing general agency business, and Seaman's livelihood. (Appendix 286). All three unrelated companies sued Superior National companies for breach of contract. (Appendix 328, 371).

•When Seaman was negotiating a business venture between non-conserved Superior National companies and Meadowbrook Insurance Group, the Commissioner's counsel sent Meadowbrook a letter alleging that Meadowbrook "may have received certain of Insurance Companies' proprietary documents from or through the former management of the [Insurance] Companies," and that the information was "illegally disseminated" in violation of a court order. (Appendix 258). The Commissioner never identified any such "proprietary documents." The letter caused Meadowbrook to break off discussions with Seaman, destroying an opportunity to resurrect the managing agency business.

•The Insurance Commission told all managers, including those of non-conserved companies, that they must take orders from the Commissioner and not Seaman, the CEO.

•The Insurance Commissioner directly interfered with Seaman's performing his duties for non-conserved companies, including by threatening to prosecute him for contacting his employees or acting to protect the interests of the non-conserved companies.

•A July 1, 2000 Superior Court order made the Kemper Group the successful bidder in an auction that included assets belonging to non-conserved Superior National companies. In a September 2000 settlement that the Commissioner and Kemper made with the non-conserved Superior National companies, the parties agreed on the assets to be transferred and gave each other limited releases. Seaman was not a party to the settlement.

On May 1, 2001, Seaman filed claims with the Insurance Commissioner. The Commissioner did not respond for over two years and did so only when ordered to do so by

the Superior Court. Without conducting any form of administrative hearing, the Commissioner rejected these claims on April 10, 2003. (Appendix 229). The Commissioner said that the claims could not be considered because he did not anticipate having any assets to satisfy the claims.

Seaman then filed in the Superior Court, pursuant to Insurance Code §1032, a request for an order to show cause why his claims should not be granted. The Superior Court concluded that Insurance Commissioner had the authority to seize the companies without court order. (App. at 51). The Court of Appeal affirmed the decision of the Superior Court. The Court of Appeal held that Insurance Commissioner had not abused its authority in seizing the assets (App. 8-12) and that the seizure of Seaman did not violate the Fourth Amendment because he was present "not as an individual but rather in his capacity as an executive officer of Seized Insolvent Companies." (*Id.* at 18). The California Supreme Court denied review on January 25, 2006. (App. at 55).

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT REVIEW TO RESOLVE AN ISSUE OF NATIONAL IMPORTANCE, WHICH HAS DIVIDED THE FEDERAL AND STATE COURTS, CONCERNING THE DUE PROCESS REQUIRED WHEN THE GOVERNMENT SEIZES THE ASSETS OF BUSINESSES AND THEIR EMPLOYEES.

Across the country, government officials, like the Insurance Commissioner, in this case, are seizing the assets of businesses they regulate. Often, at the time of